Vanderbilt Law Review

Volume 5
Issue 4 *Issue 4 - June 1952*

Article 2

6-1952

Delinquent Parents and the Criminal Law

Frederick J. Ludwig

Follow this and additional works at: https://scholarship.law.vanderbilt.edu/vlr

Part of the Criminal Law Commons, and the Family Law Commons

Recommended Citation

Frederick J. Ludwig, Delinquent Parents and the Criminal Law, 5 *Vanderbilt Law Review* 719 (1952)
Available at: https://scholarship.law.vanderbilt.edu/vlr/vol5/iss4/2

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

DELINQUENT PARENTS AND THE CRIMINAL LAW

FREDERICK J. LUDWIG*

"There are no delinquent children; there are only delinquent parents."

This tautological truism has long been the speaker's mainstay at Rotary luncheons, parent-teacher meetings, and assorted roundtables and institutes on juvenile delinquency. When a New York Children's Court judge undertook to put the principle into practice five years ago, a storm of controversy was unleashed which has not yet subsided. The case, tragic enough, involved 14-year-old Frankie, who scored hits on three passers-by with a stolen gun. The boy, who had been sleeping in hallways and on buses, was committed as a juvenile delinquent to a state training school. His mother, whom the arresting officer found in a neighborhood bar, was convicted of contributing to the boy's delinquency and sentenced to one year in the penitentiary. The policeman's petition charged her with failing to provide a home, neglecting to have the boy attend school and, through parental irresponsibility, with developing in him a pattern of delinquent behavior.

"By your own acts," the sentencing judge reprimanded her, "You encouraged delinquency in your child. How could it be different with your way of living? Drink after drink, living in one apartment after another with various men. It was through your negligence that three innocent persons were shot by your delinquent son."[1]

An appellate court reversed the conviction because of the admission of inadmissible hearsay evidence, and ordered a new trial, "assuming the proper authorities deem it necessary to have a new trial."[2] The appeal had been undertaken by a local welfare group who had investigated the woman's history. The mother, with two children, had been abandoned by her husband at the age of twenty. The husband's financial contributions to the boy's support left him outside the pale of criminal responsibility. This mother had been brought up by relatives—"substitute parents" who unsuccessfully tried to marry her off at sixteen to a man twice her age. They finally succeeded when she was nineteen. Before that, her natural parents, unwilling or unable to care for her, had shipped her into this country at the age of nine "like a piece of baggage."[3] If indeed this mother was criminally responsible for her sharp-

*Professor of law, St. John's University; Professor of law, University of Nebraska, 1948-1950; Member of the New York Bar; Counsel, Mayor's Committee on Drug Addiction Among Teenagers, City of New York; Youth Counsel Bureau, City of New York; Member, Board of Directors, Police Coordinating Councils, City of New York; author of books and articles on legal subjects.

1. N.Y. Times, Feb. 1, 1947, p. 17, col. 8.

2. Humann v. Rivera, 272 App. Div. 352, 71 N.Y.S.2d 321, 326 (1st Dep't 1947).

3. N.Y. Times, Mar. 18, 1947 p. 29, col. 6 (report by Edwin Lukas, Society for the Prevention of Cruelty to Children).

shooter son's delinquency, then her parents were equally responsible for hers. And who was responsible for *theirs*? This conjectural chain of parental responsibility could be traced back to the origins of the human race—to Adam and Eve, no less!—but with doubtful utility to the present-day problem.

But more proximate questions presented by enforcement of such statutes remain. If parents are to be jailed for delinquency of one child, who is there to prevent their other children from becoming delinquent? And what is to be done in the case of delinquent children without parents: should superintendents of orphans face jail?

The purpose of this article is to re-examine the problem of parental responsibility in the light of principles of criminal law administration and not sociological supposition: (1) What is the law of responsibility of parents for juvenile offenders? (2) What ought the law be?

The significance of preventing delinquency and parental fault which causes it can hardly be overstated. Most old and hardened offenders commenced their criminal careers at tender ages.[4] And youth—the age of aggressive vigor—accounts for a share of reported crime in gross disproportion to their numbers in the population.[5] It has long been known that moral judgments of children are more closely correllated with those of their parents than with any one else influencing their behavior.[6] In a recent study of a delinquent and non-delinquent group of boys between eleven and seventeen matched with respect to age, general intelligence, ethnic-racial background and area of residence, the delinquent group was readily predictable by factors weighted as follows: cohesiveness of family (unintegrated 96.9, cohesive 20.6); affection of mother (indifferent or hostile 86.2, warm, overprotective 43.1); supervision by mother (unsuitable 83.2, suitable 9.9); affection of father (indifferent or hostile 75.9, warm, overprotective 33.8); discipline by father (overstrict or erratic 71.8, firm but kindly 9.3).[7]

The responsibility of *A* for harmful conduct of *B* committed against *C*, where *A* himself took no direct part in such conduct, is viewed in different

4. "Among 643 boys about whom the age of first or early delinquency could be ascertained, 14 per cent showed symptoms of such maladjustment and misconduct at the early age of six or less, 23 per cent at seven or eight, 27 per cent at nine or ten, 21 per cent at eleven or twelve, and only 16 per cent at thirteen or over." GLUECK, CRIME AND JUSTICE 201 (1936).

5. "The age of maximum criminality lies . . . in the young-adult period of life. This maximum is not clearly defined, for delinquency or criminality increases from the age of ten to about nineteen, where it remains nearly constant until the age of twenty-seven, after which it decreases sharply with advancing age." *Ibid.*

6. HARTSHORNE AND MAY, STUDIES IN DECEIT (1928). The correlations: .55 with parents; .35 with close associates; .03 with teachers; and .002 with Sunday-school teachers.

7. GLUECK AND GLUECK, UNRAVELING JUVENILE DELINQUENCY 261 (1950). Interesting factors in home background found *not* causal: length of time of residence in underprivileged area; kind of housing; rent paid by parents; home furnishings; average size of household; family domination by mother; and culture conflict. *Id.* at 272 *et seq.*

ways by different systems of law.[8] It is called "vicarious liability" at common law, and is a familiar topic in texts on torts, agency, partnership and other subjects.[9] Because responsibility of parents for their children's crimes under statutes involves a variety of vicarious liability, it is worthwhile to explore briefly the scope of this doctrine in the law of crime.

Except in nuisance[10] and libel,[11] the common law imposed criminal liability on one for the wrong of another only if he (1) advised or procured its commission; (2) intentionally encouraged or incited its commission; (3) intentionally assisted in its commission; or (4) conspired with others for its commission. One might also be punished, though less severely than the principal actor, if he aided a felon to escape after commission of the crime. The limits of such accessorial responsibility were coterminous with fault in the form of intention: the accomplice must have foreseen to some degree the ultimate wrong and acted for the sake of accomplishing it.[12] Strict liability,

---

8. As to Roman law, see SOHM, INSTITUTES OF ROMAN LAW 444-49 (Ledlie's transl. 2d ed. 1901); as to French law, see BRISSAUD, HISTORY OF FRENCH PRIVATE LAW § 398 (Continental Legal History Series, 1912); as to Germanic law, see Brunner, *Ueber Absichtslose Missethat im Altdeutschen Strafrecht*, 35 PROC. ROYAL PRUSSIAN ACAD. SCIENCES 832 (1890); as to Scotch law, see BATY, VICARIOUS LIABILITY c. 9 (1916).

9. Civil liability in damages of a master or principal for torts of a servant or agent within the scope of employment but without express command or negligence of the master or principal is a relatively recent development in the English common law. Under stress of the commercial revolution, Lord Holt first announced it at the beginning of the eighteenth century. Boson v. Sandford, 2 Salk. 440, 91 Eng. Rep. 382 (K.B. 1690); Turbervil v. Stamp., Skinn. 681 (1697); Middleton v. Fowler, 1 Salk. 282, 91 Eng. Rep. 247 (K.B. 1699); Jones v. Hart, 2 Salk. 441 (1699); Hern v. Nichols, 1 Salk. 289, 91 Eng. Rep. 256 (K.B. 1708). By the nineteenth century, *respondeat superior* became so firmly embedded in the common law that a master was found liable for his servant's tort committed in the course of the master's business but against his express command. Limpus v. London General Omnibus Co., 1 H. & C. 526, 158 Eng. Rep. 993 (Ex. 1862). The rationale of the rule is economic: as between two innocent persons, a principal for whose benefit his agent's wrongful act was undertaken and an injured plaintiff, the former having a deeper pocket than his financially irresponsible agent is also in a better position than the plaintiff to absorb the loss by distributing its cost to the public through prices, rates or liability insurance. Such justification does not exist in a criminal law case. See Wigmore, *Responsibility for Tortious Acts: Its History*, 7 HARV. L. REV. 315 (1894); Holmes, *Agency*, 4 HARV. L. REV. 345, 5 *id.* 1 (1891); Sayre, *Criminal Responsibility for Acts of Another*, 43 HARV. L. REV. 689 (1930).

10. The Queen v. Stephens, L.R. 1 Q.B. 702 (1866). Mellor, J., declared: "Inasmuch as the object of the indictment is not to punish the defendant, but really to prevent the nuisance from being continued, I think that the evidence which would support a civil action would be sufficient to support an indictment." *Id.* at 710.

11. Rex v. Almon, 5 Burr. 2686, 98 Eng. Rep. 411 (K.B. 1770) (rebuttable presumption that magazine owner authorized publication of libel); Rex v. Walter, 3 Esp. 21, 170 Eng. Rep. 524 (N.P. 1799) (same presumption made irrebuttable); 6 & 7 VICT. c. 96 § 7 (1843) (same presumption made rebuttable by statute).

12. The outstanding early decision on the question is presented by the famous case of Regina v. Saunders, 2 Plowd. 473, 75 Eng. Rep. 706 (K.B. 1575). Wishing to kill his wife, Saunders confided in his friend Archer who suggested poison and obtained the necessary dosage. Saunders inserted the poison in a roasted apple which he gave to his wife. His wife gave the apple to their three-year old daughter who ate in Saunders' presence, he being too fearful of his wife's suspicions to interrupt. Upon the death of his daughter Saunders was convicted of murder as a principal. The court held that Archer could not be convicted. "For the offense which Archer committed was the Aid and Advice which he gave to Saunders, and that was only to kill his Wife, and no other."

in criminal law, apart from fault based on such intent or on negligence, remained a statutory innovation. That which is now to be examined deals with parental responsibility.

To understand the present law of parental responsibility for juvenile delinquency, consideration must be given to the law of delinquency to which it is ancillary. Using rules of responsibility developed by the Romans, the common law made children of seven years and older who committed crimes as fully liable as adults, except that under fourteen such children were presumed incapable of committing crime. This presumption was rebuttable by proof of malice, which somehow made up for deficiency in age.[13] Accordingly, an eleven-year old boy who killed his companion and buried the body in a cabbage patch was ordered hanged by a thirteenth century judge.[14] In 1488 a nine-year old boy who also buried an estranged companion received like treatment when his explanation that the blood on his hands came from his nose left the court unconvinced.[15] In both cases concealment of the body was found sufficient to overcome the presumption of incapacity. Convictions of children in this country for arson,[16] assault,[17] manslaughter[18] and murder[19] —with an occasional execution[20]—provided the humanitarian impulse for reform fifty years ago leading to enactment of juvenile court acts in all but two states, and most of the nations of the world.

These statutes[21] made two principal changes in procedure and treatment. An informal proceeding replaced the rigorous criminal trial. Prosecutor became presenting attorney, the defendant child a ward of the state, judgment of guilt not a conviction but adjudication of status, and the offender not a criminal, but a juvenile delinquent. Apart from euphemistic labels, rules of evidence have been relaxed and juries virtually eliminated. Under one typical statute, the 1922 Children's Court Act of New York,[22] a separate court is created in each county, with specialized judges in some. The proceeding may be initiated by petition of parent, custodian, authorized agency or interested person, with knowledge that a child is abandoned, neglected, delinquent or otherwise within jurisdiction.[23] Upon summons signed by the judge and directed to the proper persons, the court may hear the case and inquire into the

13. See Ludwig, *Rationale of Responsibility for Young Offenders*, 29 Neb. L. Rev. 521, 522-29 (1950).

14. 24 Seld. Soc. 148 (1909). See Ludwig, *supra* note 13, at 527.

15. See Ludwig, *supra* note 13, at 527.

16. State v. Nickleson, 45 La. Ann. 1172, 14 So. 134 (1893).

17. State v. Pugh, 52 N.C. (7 Jones L.) 61 (1859).

18. State v. Milholland, 89 Iowa 5, 56 N.W. 403 (1893).

19. State v. Guild, 10 N.J.L. 163, 18 Am. Dec. 404 (1828).

20. State v. Barton, 8 Mo. App. 15 (1879), *aff'd*, 71 Mo. 288 (1879).

21. See Ludwig, *supra* note 13, Appendix at 540-46.

22. N.Y. Children's Court Act § 1.

23. *Id.* § 10.

causes of the child's delinquency or neglect.[24] Not only the stigma of criminality,[25] but also publicity, is carefully avoided. Court records are not public, may be inspected only with permission, cannot be used in any other proceeding, and names used in official reports are fictitious.[26] Adjudication of delinquency in no way may impair civil rights[27] or be used to impeach a witness.[28]

The second important change, that of treatment, enabled the court to individualize it with almost complete freedom from usual legislative maximum and minimum penalties, its purpose being reformation rather than punishment. The court may prescribe institutional or probationary care and retain jurisdiction, even over married juveniles, until they are 21.[29] Besides placing him on probation or sending him to the state institution, the court may order psychiatric study of the child,[30] removal from his home,[31] placement in a foster home or religious or charitable institution or condition his release on his parents' moving to a new neighborhood.[32]

What constitutes "delinquency" depends upon chronological age and sex and certain proscribed behavior which vary with jurisdiction.[33] In New York[34] the maximum age is sixteen but eighteen or higher is the upper age limit in most states. In all states with such statutes, behavior which would be criminal if that of an adult, constitutes delinquency—with exceptions for serious crimes. In New York, these exceptions are crimes punishable by death or life imprisonment, if committed by children between fifteen and sixteen. In such cases, whether the offender is to be treated as a criminal or juvenile delinquent depends upon the discretion of the criminal court.[35] Beyond criminal behavior, there is considerable variation in the definition of delinquency. The New York statute[36] includes these ten types of behavior: truancy, bad associates, incorrigibility, running away from home, begging, engaging in

---

24. *Id.* §§ 11, 22.

25. N.Y. PENAL LAW § 2186; N.Y. CHILDREN'S COURT ACT § 84; Kane v. Necci, 269 N.Y. 13, 198 N.E. 613 (1935).

26. N.Y. CHILDREN'S COURT ACT § 45; *In re* Robles, 193 Misc. 870, 84 N.Y.S.2d 827 (Dom. Rel. Ct. N.Y. County 1948); *In re* Di Maggio, 65 N.Y.S.2d 613 (Dom. Rel. Ct. Kings County 1946).

27. N.Y. CHILDREN'S COURT ACT § 45.

28. N.Y. PENAL LAW § 2186; Murphy v. City of New York, 273 App. Div. 492, 78 N.Y.S.2d 191 (1st Dep't 1948).

29. N.Y. CHILDREN'S COURT ACT §§ 6, 22, 30-a; *In re* Dawkins, 190 Misc. 995, 75 N.Y.S.2d 546 (Dom. Rel. Ct. N.Y. County 1947); *In re* Robles, 193 Misc. 870, 84 N.Y.S.2d 827 (Dom. Rel. Ct. N.Y. County 1948); *In re* Jones, 85 N.Y.S.2d 664 (Dom. Rel. Ct. N.Y. County 1949).

30. *In re* Kemp, 192 Misc. 267, 78 N.Y.S.2d 588 (Dom. Rel. Ct. N.Y. County 1948).

31. *In re* Brown, 50 N.Y.S.2d 106 (Dom. Rel. Ct. Bronx County 1944).

32. *In re* Kingsley, 183 Misc. 727, 49 N.Y.S.2d 947 (Dom. Rel. Ct. N.Y. County 1944).

33. See Ludwig, *supra* note 13, at 529-32.

34. N.Y. CHILDREN'S COURT ACT § 2; N.Y. PENAL LAW § 486.

36. N.Y. CHILDREN'S COURT ACT § 2(2); N.Y. PENAL LAW § 2186.

36. See note 34 *supra*.

illegal occupation, use of obscene or profane language, frequenting unlawful places, or endangering morals or health of himself or others. In other states, this behavior, along with as many as 25 other types constitute delinquency.[37]

I. THE LAW OF PARENT RESPONSIBILITY

1. *Statutes*

But the heart of our inquiry is not the child, but the parent. Along with juvenile court acts, all but two states[38] have statutes punishing parents for "contributing to the neglect or delinquency" of children. The definition of the criminal behavior is often no more specific. The New York statute,[39] one of the most comprehensive, makes criminal negligent omission as well as intentional acts that promote or contribute to delinquency. Certain variation among these statutes, indicated in the Appendix, *infra,* may be briefly summarized:

Adult Responsible. Under the New York statute, the adult responsible is a "parent, guardian or other person having custody." Identical or substantially identical language is employed in the statutes of 28 other states.[40] Substantial doubt is created by such provisions with respect to adults who do not stand *in loco parentis* to the child, such as a mother's paramour.[41] The remaining jurisdictions make any adult liable, phrasing scope either in terms

37. These include: growing up in idleness or crime; immoral conduct; knowingly visiting house of ill fame; visiting gambling place; wandering about railroad yards or tracks; jumping trains; patronizing saloon where intoxicating liquor is sold; roam streets at night for no lawful reason; patronizes poolrooms or bucket shops; immoral behavior in school; uses tobacco, drugs, intoxicating liquor; makes indecent proposal; loiters in public as vagrant; operates motor vehicle while intoxicated; unlawfully attempts to marry without consent; practices sex irregularities; disorderly; found in occupation dangerous to self or others; found in unlawful premises.

38. Del. and Vt.

39. N.Y. PENAL LAW § 494. "1. A parent, guardian or other person having custody of a child actually or apparently under sixteen years of age, who omits to exercise reasonable diligence in the control of such child to prevent such child from becoming guilty of juvenile delinquency as defined by statute, or from becoming adjudged by a children's court in need of the care and protection of the state as defined by statute, or who permits such a child to associate with vicious, immoral or criminal persons, or to grow up in idleness, or to beg or solicit alms, or to wander about the streets of any city, town or village late at night without being in any lawful business or occupation, or to furnish entertainment for gain upon the streets or in any public place, or to be an habitual truant from school, or to habitually wander around any railroad yard or tracks, to enter any house of prostitution or assignation, or any place where gambling is carried on, or any policy shop, or to enter any place where the morals of such child may be endangered or depraved or may be likely to be impaired, and any such person or any other person who knowingly or wilfully is responsible for, encourages, aids, causes, or connives at, or who knowingly or wilfully does any act or acts to produce, promote or contribute to the conditions which cause such child to be adjudged guilty of juvenile delinquency, or to be in need of the care and protection of the state, or to do any of the acts hereinbefore enumerated, shall be guilty of a misdemeanor."

40. Ala., Conn., Fla., Ga., Ida., Ill., Ind., Kan., Me., Md., Mass., Minn., Miss., Mont., Neb., N.H., N.J., N.C., N.D., Okla., R.I., S.C., Tenn., Tex., Wash. and Wis.

41. Citrin v. Belcastro, 196 Misc. 272, 91 N.Y.S.2d 275 (Dom. Rel. Ct. N.Y. County 1949).

of "any person"[42] or "whoever,"[43] or merely defining the conduct which contributes to delinquency.[44]

Child's Upper Age Limit. Six states fix the maximum age of the child at 16,[45] New York at "actually or apparently under 16," six states at 17,[46] 25 at 18,[47] one at 19,[48] three at 21,[49] and no limit is specified in one state.[50] Two states fix different limits depending on sex, both limiting male offenders to 17 and females in one state at 16[51] and the other at 18.[52] And states vary the age according to special circumstances, one fixing it at 18 (unless the child is handicapped, when it is made 21),[53] and another at 16 in cases of contributing to neglect, and 18 for delinquency.[54]

Prior Adjudication of Delinquency. Surprisingly enough, most of the states do not require adjudication of the child as delinquent before conviction of the parent or other person for contributing.[55] In about thirteen states such prior adjudication seems necessary from statutory language or judicial interpretation.[56] In three states, including New York, no prior adjudication is required, but the child must be before the juvenile court.[57]

Court Having Jurisdiction. Most states confer jurisdiction over adults for trial of the crime of contributing to delinquency on juvenile courts.[58] The primary concern of such courts is with noncriminal delinquency, neglect and dependency proceedings of children. Seven states make such jurisdiction concurrent with other courts.[59] The remainder vest jurisdiction in various civil and criminal courts.[60]

---

42. Ariz., Ark., Cal., Colo., D.C., Ky. ("no person"), Mich., Mo., Nev., N.M., Ore., S.D., Utah, Va., W. Va. and Wyo.
43. Ohio.
44. Ia., La.
45. Ala., Conn., Ga., Kan., N.C. and S.C.
46. La., Mass., Mich., Mo., Tenn. and Tex.
47. Ariz., Col., Del., Fla., Ida., Ind., Md., Minn., Miss., Mont., Neb., Nev., N.H., N.J., N.D., Ohio, Okla., Ore., Pa., R.I., Utah, Va., Wash., W. Va. and Wis.
48. Wyo.
49. Ark., Cal. and S.D.
50. Me.
51. Ky.
52. Ill.
53. Ohio.
54. N.M.
55. Ala., Ariz., Ark., Cal., Colo., Conn., D.C., Ida., Ill., Ind., Ky., La., Md., Mich, Miss., Mo., Mont., Nev., N.M., N.D., Okla., Ore., Pa., S.D., Utah, Va., W. Va., Wis. and Wyo.
56. Fla., Ga., Kan., Minn., Neb., N.H., N.J., N.C., Ohio, S.C., Tenn., Tex. and Wash.
57. Ia., Mass. and N.Y.
58. Ala., Cal., D.C., Fla., Ill., Ia., Kan., La., Md., Mich., Minn., Miss., Mo., Mont., Neb., Nev., N.C., N.D., Ohio, Ore., Pa., R.I., S.C., Utah, Va., Wash., W. Va. and Wis. In New York, such jurisdiction is vested in the Children's Court Division of the Domestic Relations Court in New York City, the Children's Court, presided over by a County (criminal) Court judge in other counties except in Ontario and Chautauqua counties where the regular criminal courts have jurisdiction.
59. Colo., Ind., Me., Mass., N.J., N.M. and Okla.
60. Ariz., Ark., Conn., Ga., Ida., Ky., N.H., S.D., Tenn., Tex. and Wyo.

Punishment. All except two[61] of the states having such statutes provide specifically for punishment. Of these, all except four,[62] make provision in terms of maximum imprisonment and maximum fines. Except for one which prohibits imposition of both fine and imprisonment,[63] these states permit the court in its discretion to impose either or both upon conviction. The maximum terms of imprisonment range from twenty days to three years, and the maximum fines from fifty to one thousand dollars. The most frequent combination followed in eleven states is imprisonment for one year or a fine of five hundred dollars, or both.[64] Of the four with minimum penalties—unusual for misdemeanors—two provide for imprisonment of not less than ten days,[65] and all four have minimum fines ranging from five to fifty dollars. One state makes a second conviction a felony.[66] In addition to these provisions, an injunction may be issued against offending parents in two states.[67]

Suspension of Sentence. Ordinarily punishment for misdemeanants may be suspended upon certain conditions, such as the posting of a bond or satisfactory completion of a probationary period. All but thirteen states[68] with parent-responsibility statutes make specific provisions for this. Most states leave the period of suspension to the discretion of the court; some providing for a period of two years,[69] and the remainder for periods ranging from one[70] to five years.[71]

Trial and Proof. Since the Constitution of the United States leaves the states free to try criminal cases with or without juries, trial by jury of this crime varies with each state. The degree of proof beyond a reasonable doubt is of course required in all jurisdictions in criminal cases. And while the presumption of innocence until conviction prevails, one state has created a statutory presumption of responsibility of a parent for the last delinquency of a child who has been adjudged delinquent on more than one occasion.[72]

2. *Cases*

Customary lack of funds among parents convicted of contributing to the delinquency of their children accounts for infrequent appeals, and hence the paucity of such cases in official reports. Other reports, however, indicate

61. N.C. and N.D. (punishable as misdemeanors).
62. Mont., Ohio, Tenn. and Wyo.
63. Mass.
64. Ark., Ky., La., N.H., N.Y., S.C. (other than Greenville County), S.D., Tex., Va., W. Va. and Wis.
65. Ohio and Tenn.
66. Okla.
67. Md. and Miss.
68. Conn., La., Me., Mo., N.J., N.M., N.Y., N.C., Okla., Ore., Tex., Va. and Wyo.
69. Ariz., Colo., Ind., Ia., Neb., Nev., N.D., S.D., W. Va. and Wis.
70. Ala., Ill. and Ky.
71. Cal.
72. Minn.

that such statutes are not infrequently invoked. One juvenile court judge writes of approximately 500 cases over a ten-year period in Toledo, Ohio.[73] Another writer mentions 579 cases in a single month in Chicago.[74] About 11 of the approximately 75 cases in official reports have arisen in New York. Regrettably many of the opinions—although using fictitious names—fail to disclose the facts involved. It is possible to consider these cases under three headings (1) intentional contribution to delinquency; (2) negligent contribution to delinquency; and (3) liability in the absence of fault in a criminal law sense.

Intentional Behavior. In these cases the adult not only foresees the specific consequence which constitutes delinquency or neglect of the child, but acts to achieve that consequence. His relationship to the child's delinquency is one within common law limits of accessorial responsibility. The adult aids, abets, counsels, commands or induces the delinquent behavior, or conspires with the child in its commission. Should such adult be similarly related to the commission of a felony by another adult, he would be guilty of a felony. Curiously enough, the fact that the principal is a child makes such instigating adult responsible for the misdemeanor of contributing to delinquency.[75] This is so because behavior felonious on the part of an adult is only juvenile delinquency and not a crime when engaged in by a child.

A considerable number of the reported cases fall into this category. The most obvious situation is one in which the parent or adult actually commits a crime against the child, usually one of a sexual nature, such as indecent assault.[76] The other cases involve the adult in the role of accessory. Parents of a 15-year-old girl, victim of statutory rape, induced her to misrepresent her age as 18 so that she could marry the man and thus enable him to escape prosecution. Both father and mother actually travelled to another state to confirm this misrepresentation. The matter later came to the attention of a court when the minor applied for support for herself and her child from her errant husband.[77]

A similar conviction based upon inducing the commission of crime by a child involved a mother, convicted several times of bootlegging, who advised her 15-year-old daughter "to clean up the house and take care of the cus-

---

73. Alexander, *What's This About Punishing Parents?* 12 FED. PROBATION 23 (1948).

74. Coulson, *Little Donald Took an Axe,* 196 HARPER'S MAGAZINE 385, 386 (May 1948).

75. Except, of course, where the child is merely an innocent agent, when the adult who procures him to commit a felony is responsible as a principal for the felony. FOSTER, CRIMINAL LAW 349; 1 BISHOP, NEW CRIMINAL LAW § 651.

76. People v. Lett, 69 Cal. App.2d 665, 160 P.2d 112 (1945).

77. Denkins v. Denkins, 76 N.Y.S.2d 465 (Dom. Rel. Ct. Bronx County 1948).

tomers" in her absence. Dutifully the daughter served wine of her mother's vintage to several men, took their money and gave it to her returning parent.[78]

The behavior induced by the parent may not be criminal if engaged in by an adult but is one of the specifically defined forms of delinquency among children, such as truancy.[79] For purposes of criminal liability at common law, these cases would make the offending parent an accessory before the fact if an adult rather than a child had been counselled to commit the crimes.

Another frequent pattern of intentional behavior is that which would make the offending adult an accessory after the fact if the perpetrator were not a child. Although the Fagin situation is by no means typical,[80] in the sense that the adult induced the child to steal, a number of cases involve receipt by an adult of goods stolen by a child—junk,[81] jewelry[82] and even bedsheets from a neighbor's clothesline.[83] And in one case the adult involved, an illicit vendor of whiskey, harbored a delinquent girl escaped from the county jail.[84]

Negligent Behavior. Like intentional behavior, the nature of the fault in negligent conduct involves foreseeability of consequences. Unlike it, the adult does not act for the sake of achieving the specific consequence, but rather a collateral objective. Thus, a father who leaves his loaded revolver in an open drawer of a buffet in the dining room where his child roams, is negligent in creating a risk of foreseeable harm.[85] And the same is true of a storekeeper who sells fourteen rounds of .22 calibre pistol cartridges to a 15-year-old boy.[86] This is so even though neither acted for the sake of having a neighbor's child shot.

Two components which must be balanced against each other in determining whether conduct is negligent in causing delinquency are: first, the magnitude of the foreseeable risk created; and, second, the justification, or lack of it, involved in its creation. A man who dashes in the path of an oncoming train creates a risk of death to himself of great magnitude. If his collateral objective is to save his hat, the risk is clearly unjustifiable and his conduct unquestionably negligent. But if the dash is to save the life of an infant, the

78. People v. Ferello, 92 Cal. App. 683, 268 Pac. 915 (1928).

79. Blake v. State, 114 Ind. App. 1, 48 N.E.2d 651 (1943). *But cf.* People v. Hall, 192 App. Div. 430, 183 N.Y. Supp. 46 (2d Dep't 1920).

80. *But cf.* N.Y. World-Telegram, Dec. 17, 1948, p. 18, col. 4 (mother held on charge of shoplifting hosiery with her minor daughter).

81. People v. Dritz, 259 App. Div. 210, 18 N.Y.S.2d 455 (2d Dep't 1940).

82. People v. Denny, 50 N.Y.S.2d 435 (Dom. Rel. Ct. N.Y. County 1944).

83. People v. Jones, 199 Misc. 926, 102 N.Y.S.2d 629 (Dom. Rel. Ct. N.Y. County 1951).

84. People v. Kelley, 230 App. Div. 249, 243 N.Y. Supp. 613 (3d Dep't 1930).

85. *In re* Di Maggio, 65 N.Y.S.2d 613 (Dom. Rel. Ct. Kings County 1946).

86. Bowman v. Cruz, 188 Misc. 826, 68 N.Y.S.2d 413 (Dom. Rel. Ct. N.Y. County 1947).

same risk may not be negligent at all if there were no alternate means of accomplishing this objective.

Risks may be created with full awareness of probable danger, or inadvertently. Their magnitude and justifiability are measured not by the actor's subjective evaluation but by a hypothetical standard, entirely external, of a reasonable person. For liability of a civil nature, this risk—incapable of precise computation in terms of percentage of probability—must be at least "appreciable." Criminal courts usually require something more.

A common situation involving negligence is that of the runaway parent who leaves unattended children. A grandmother left five children, ranging in age from six weeks to thirteen years, alone in a tenement. Two of them were her own. She knew that her daughter, the mother of the other three, would leave for work at about 6 P.M. Later a fire broke out, burning one infant to death and killing another by suffocation. No question of justification could be raised by the grandmother, who was found by a policeman intoxicated at 3 A.M.—in "the home of some person not her husband."[87] The only question presented by her sentence of three months in the workhouse for the misdemeanor of contributing to the neglect of these children is the failure to prosecute for the felony of manslaughter. Yet in an Ohio case, with a more worthy collateral objective and no consequence of death, a mother was convicted of the same crime and sentenced to one year in the workhouse. This mother left three daughters, age seven to eleven, in order to go to her wartime factory job. Proceedings against her were initiated when the girls were found bathing in a nearby river, unsupervised and *en deshabille.*[88]

Other cases involved creation of risks of various sorts of delinquency. In one, a girl was so tragically obese that she was unable to get to school. A reducing diet prescribed by school physicians was ignored by her parents who were more concerned with their daughter's appetite than her education. A suspended sentence of one year was to no avail. Not until the sentence was executed by putting her parents in jail for a few weeks did the girl lose 75 pounds and regain enough mobility to get back to school—and enough of her figure to go dancing.[89] In still another case, a father encouraged his 13-year-old daughter's precocious preoccupation with cafe society by permitting her to visit a night club of questionable repute. He was sent to jail for his indulgence.[90]

Strict Liability. In a considerable number of convictions for contributing to delinquency no fault in causing the specific delinquency—either intentional

87. *In re* O'Donnell, 61 N.Y.S.2d 822 (Dom. Rel. Ct. N.Y. County 1946).
88. Cited in Bowman v. Cruz, 188 Misc. 826, 68 N.Y.S.2d 413, 427 (Appendix) (Dom. Rel. Ct. N.Y. County 1947).
89. See Alexander, *supra* note 73, at 26.
90. State v. Scallon, 201 La. 1026, 10 So.2d 885 (1942).

or negligent—can be found. The parent's conduct is not foreseeably related to the child's misconduct. Two early Louisiana eases involving tort liability supply illustrations. In one, a 13-year-old boy celebrated New Year's Day by shooting a younger playmate in the eye with a gun loaded with powder and cotton wad. It cost his father a thousand dollars.[91] Two years later in a Christmas night display of fireworks, six-year-old George Blaise aimed his Roman candle at a group of children on the sidewalk below the gallery of his house. One of the flaming balls struck a little girl in the eye. Damages of two thousand dollars were assessed against George's father, who, incidentally, was absent from home during the celebration.[92] These cases, based upon the civil law, are contrary to the common law's refusal to recognize any vicarious liability without fault of a parent, as such, for the torts of a child.[93]

A more frequent situation is that of the "constructive crime" of contributing to delinquency. When so serious a consequence as death is involved, the criminal law has found a defendant liable for homicide although he caused it unintentionally and without negligence, being otherwise engaged in the commission of some crime. Numerous legislative and judicial restrictions have been imposed on the application of these felony-murder and misdemeanor-manslaughter rules in homicide cases, and the criminal law has resisted extension of them by analogy to nonhomicidal situations. Where they have been applied to criminal homicide, it should be noted that liability of the defendant depends upon his act having been the physical cause of death, even though such act was accidental or without fault.

In a number of cases of contributing to delinquency, it seems that juvenile courts have gone further in extending the doctrine of constructive crime. The requirement of causation has been ignored. Sometimes liability has been found even when the underlying behavior does not amount to a crime. A juvenile pin setter rifled a desk drawer and stole $130 and other money from a bowling alley. The assistant manager, victim of the larceny, was held liable for contributing to the boy's delinquency and fined an additional hundred dollars. By not requiring an employment certificate from young Raffles, in violation of the State Labor Law, the court concluded that the hapless employer was criminally responsible for the theft from himself.[94]

The tragic case of the depraved woman whose son sniped at three passers-by, mentioned above,[95] takes a second step beyond the limits of the

91. Marionneaux v. Brugier, 35 La. Ann. 13 (1883).

92. Mullins v. Blaise, 37 La. Ann. 92 (1885).

93. PROSSER, TORTS § 100 (1941).

94. *In re* Lewis, 193 Misc. 676, 84 N.Y.S.2d 790 (Child. Ct. Westchester County 1948).

95. See *supra* note 2.

doctrine of constructive crime in homicide situations. Like the case of the pin setter's employer the relationship of conduct as cause to a child's delinquent act as effect is tenuous. While the employer's conduct was criminal in violating the Labor Law, this unfortunate woman's behavior, immoral and reprehensible beyond question, was not in itself made criminal by any statute. Her son's delinquent behavior simply furnished an opportunity to make criminal behavior not otherwise criminal, *i.e.*, when engaged in by a childless adult or a parent with children who do not happen to shoot.

Finally in a recent case, a juvenile court reached a highwater mark of "constructive crime" by convicting an unmarried mother of the crime of contributing to the neglect of her children, apparently because she bore them. The children were not found either delinquent or neglected and were in fact well taken care of by welfare funds. Moreover, the court recognized their need for maternal care by suspending the mother's sentence. But because the paternity of none of the seven had ever been established (they lived in a household with another mother and five children, similary borne) the court branded the mother a criminal. This was done despite the fact that the law nowhere makes criminal the bearing of illegitimate children, no matter how immoral their conception. "This case," the court explained with considerable indignation, "illustrates the many burdens which are imposed upon the taxpayers through the activities of immoral persons. . . ."[96]

II. WHAT THE LAW OUGHT TO BE

A workable way to evaluate law is to view it as a means to an end. Accordingly, the first step in determining what the law of a parent's responsibility ought to be, is to make a rational choice of an end. Only then may particular statutes and decisions, considered as means, be selected or rejected. When this is done, the enactment, interpretation and administration of such legislation may be consciously directed toward a solution.

If the ultimate end of parental responsibility statutes is the prevention of socially substandard and immoral behavior—such as drunkenness, promiscuity and work-shyness—then it might best be achieved by simply defining such behavior and making it criminal, either for parents alone or for all adults. But if the end of such statutes is, as it should be, the prevention of delinquency among young persons, then making criminal certain socially substandard behavior might be insufficient in some cases and too severe in others. Considered as an end, preventing delinquency, being somewhat negative, may not be a desirable end in itself, but worthwhile only because it in turn is a means to more valuable ends, such as the prevention of adult crime and the attainment

96. *In re* Jones, 198 Misc. 269, 98 N.Y.S.2d 524 (Child Ct. Westchester County 1950).

of a socially and morally just way of life. Because preventing delinquency is not the only end worth seeking, it is important that the means selected do not at the same time disserve other ends, equally or more valuable in the long run.

Considered as a means to the end of preventing delinquency, the criminal law—drastic though its intervention may be—is fearfully limited. Compared with the moral and religious education of home, church and school, the criminal law with its centuries of experience has not yet been able to build character, or develop desirable habits, attitudes, interests and ideals. Its influence on human behavior is limited to the manner in which it actually impinges upon those who commit crimes. This influence makes itself felt by (1) subjecting actual offenders to unpleasant treatment in the hope (often in vain) that its memory will intimidate them from offending again; (2) treating actual offenders so that potential ones will be dissuaded by example; (3) restraining those persons more likely to commit crimes than the generality of mankind; and (4) rehabilitating corrigible offenders.[97]

What effect does this circumscribed method of treatment have on parents with delinquent or neglected children?

Intimidation and Deterrence. Punishment may be inflicted for its own sake, as for example, in vengeance, expiation or retribution. It may also be employed as a means of influencing human behavior. Men seek pleasure, avoid pain. The efficacy of unpleasant treatment in intimidating actual offenders and deterring potential ones depends upon two factors: (1) certainty of infliction; and (2) intensity.

Its certainty of infliction on delinquent parents is seriously diminished by a number of circumstances, among them the fact that public attention is seldom directed to such parents until the children have reached the age of truancy.[98] Intervention at this time may be too late to prevent delinquency already well fortified by a home environment of neglect, cruelty and lack of parental control.

Intensity is often insufficient and yet cannot be made more severe. In one Ohio case, a couple left their infant, under two years of age, locked outside in their automobile while they sought diversion in a night club. A fire broke out. The infant miraculously recovered from severe burns but was left marred for the rest of his life with facial disfigurement. That punishment of the parents was thought sufficient by the authorities, who preferred no charge of neglect. Only a year later, the same couple was again before the juvenile

---

97. See Ludwig, *Control of the Sex Criminal*, 25 ST. JOHN'S L. REV. 203, 205-06 (1951).

98. See *supra* note 4; GLUECK AND GLUECK, UNRAVELING JUVENILE DELINQUENCY 285-86 (1950).

court. They had gone nightclubbing again, this time leaving the scarred son at home, and locking a new-arrived infant in their automobile. With understandable logic, their lawyer argued (without success, however!) that there was scant chance that conviction for a misdemeanor and a year's imprisonment would intimidate his clients in the future when their dreadful experience of the previous year had not done so.[99]

Yet to increase the severity of punishment and make this behavior a felony might do more harm than good. The criminal law depends for its enforcement on parents in the community—as complainants, witnesses, jurors. Their reluctance to participate in the conviction of a fellow-parent is often directly proportionate to the severity of punishment. The result is often failure to convict for any offense at all. Such nullification obliterates any intimidating effect on actual offenders and seriously impairs the deterrent effect on potential ones. Increasing severity of punishment may diminish certainty of infliction.

But apart from the effect of a given quantum of punishment, the question whether any punishment at all should be inflicted on delinquent parents is an open one for many situations. It would be futile to punish parents who through no fault of their own (intentional or negligent) have delinquent children. Its effect is to punish them simply for being parents and (in part) to deter potential parents from having children.

More frequently than not, it would be unjust to punish delinquent parents, even when they are at fault. Its effect is often the infliction of pain on innocent children by deprivation of necessities (if the offending parent is fined), or deprivation of a parent (if jailed). Finally, even though a parent is at fault, it may be imprudent to punish him. Punishment, especially if severe, embitters and brutalizes more often than it reforms and rehabilitates.

Restraint and Rehabilitation. If the effectiveness of punishment is thus circumscribed, may not the criminal law justify application of nonpunitive treatment? Without trying to intimidate actual offenders or deter potential ones by inflicting pain, the criminal law may nevertheless prevent crime by placing dangerous persons behind bars. It must be concluded that no matter how much its purpose may be the protection of society, or incapacitation and restraint of likely criminals, such treatment is still compulsory and subject to all the above-mentioned shortcomings of punitive treatment. The bulk of cases of defective parents are those based on negligence or those in which parents are strictly liable apart from fault, in the criminal sense. Certainly of no great advantage to their own families, such parents at the same time are hardly such menaces to society as to justify the shackles of criminal law.

99. See Alexander, *supra* note 73, at 24-25.

Rehabilitation, although a commendable objective of treatment, cannot justify making criminals of all defective parents. Not all such parents are corrigible. No workable criteria have been developed to separate parents who will respond to reformative treatment from those who will not. And none exist that can tell us when it is safe to stop treatment because the patient is cured. Even among the most promising prospects, a program of reeducation undertaken in the name of the criminal law is not likely to succeed for that reason alone. Having branded the entering freshman with the stigma of a convict, he is then offered a two-course elective program: (1) prison, or (2) compulsory attendance at evening classes on how to be a model parent. It is small wonder that this curriculum—tried in San Francisco—has resulted in a stultified learning process.

It seems clear that the role assigned criminal law by present parental responsibility statutes is much too big even for this old and experienced actor. A smaller part must be substituted. The broad sweep of these statutes and their interpretation and administration must be cut down to tried and tested dimensions appropriate for effective operation of criminal law. Conduct of parents contributing to delinquency should be made criminal only when it can be contained within these specifications:[100]

(1) It is possible to deter by threat of punishment. While it is desirable to deter all sorts of conduct by parents which result in delinquency or neglect of children, it is not possible to do so in all such cases by threat of punishment. To punish parents whose children become delinquent through no foreseeable fault is simply punishing parents for having children. Nullification, with consequent community disregard of statutes so administered, will lead to their repeal or nonenforcement even in appropriate cases. And such cases are limited to intentional and negligent conduct—fault, in the criminal law sense—which is possible to deter by threat of punishment.

(2) It is indicative of a dangerous person. Although it may be both desirable and possible to deter by threat of punishment both intentional and negligent behavior of parents contributing to delinquency, generally it is only intentional conduct which creates danger sufficient to require intervention by criminal law. Parents and other adults who counsel, command, induce, procure, aid, encourage or conspire in the commission of delinquent acts by young persons do so fully aware that such acts will be committed and for the sake of their commission. A parent who would so wilfully behave with his own child is dangerously likely to do so with children not his own. Precisely because his conduct is intentional, there is slight chance of community sympathy and identification with him which would nullify an attempt to punish

100. See Ludwig, *supra* note 97, at 207-12.

him criminally. The same is not so for negligent conduct. Except where the consequence is as serious as death, equivalent community indignation cannot be aroused against the negligent parent. The probability of a harmful act being committed by the child is substantially less than when the parent acts intentionally. The danger of making children not his own delinquent is less than appreciable. And the chances of nullification in attempting to prosecute him criminally are considerable. By this criterion, except in cases where so serious a consequence as death has resulted, only intentional behavior of adults contributing to delinquency of children should be made criminal.

(3) It should be capable of unambiguous statutory definition. Mr. Justice Holmes has observed:

> "Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do after a certain line is passed. To make the warning fair, so far as possible the line should be clear."[101]

This requirement of advance notice must be observed lest the criminal law, in its anxiety to serve the end of preventing delinquency, disserves at the same time the equally-valuable ends of individual freedom and civil liberty. Accordingly, sufficient proof of a causal relationship between the parent's conduct and the child's delinquency or neglect should be necessary to convict. And "delinquency," "neglect" or "dependency" must be kept within the limits of statutory and judicial definition.

For purposes of treatment, there should be no blanket characterization of such criminal behavior in terms of misdemeanor. When adults intentionally contribute to the child's commission of an act which would be a felony if done by an adult, then the crime of contributing should amount to a felony. It is self-evident that the circumstances which make the felonious behavior of a child juvenile delinquency ought not to reduce the degree of treatment of an adult responsible for the child's behavior. At the same time, once there has been a conviction the trial court should have the utmost discretion in determining treatment. More harm than good would result from making such conduct criminal, if mandatory punishment were to be prescribed by the legislature.

Because juvenile courts have not been designed and are ill-adapted for criminal trials jurisdiction over persons charged with crimes of contributing to delinquency or neglect should be vested in regular criminal courts. With stigma of criminal conviction and loss of liberty at stake, it is only fair to assure protection of all fundamental rights in a criminal proceeding.

101. McBoyle v. United States, 283 U.S. 25, 27, 51 Sup. Ct. 340, 75 L. Ed. 742 (1931).

The remainder, and numerical bulk, of the contributing cases of adults (grounded on unintentional behavior) can most conveniently be disposed of by the juvenile courts in a non-criminal proceeding modeled on those involving child delinquency. The final judgment of these courts in such cases would involve no stigma of criminal conviction and no punishment of fine or imprisonment, but an adjudication of parental delinquency. A written order accompanying such judgment should specify the conduct to be engaged in or refrained from by the parent, to remove the causes of the child's delinquency or neglect. Wilful violation of any reasonable provision of such an order should be made criminal and subject to the jurisdiction of the criminal courts.

This disposition of unintentional cases is better adapted to ascertaining and removing causes of delinquency than present criminal proceedings. The criminal trial of an issue of fact is aimed solely at determination of guilt of a specific charge or charges. Proof beyond a reasonable doubt, presumption of innocence, burden of proof, corroboration of otherwise credible testimony, and often representation by counsel and trial by jury are its inevitable concomitants. Yet cause and effect in unintentional cases are frequently not susceptible to disclosure under such rigorous standards. On the other hand, the noncombative, informal investigation of the juvenile court, with no stigma of conviction or loss of liberty at stake, and no danger of community resentment and nullification is far better calculated to reveal and remove the causes of delinquency. If the end of preventing delinquency is valuable enough to justify removal of stigma of criminality in cases in which children are defendants, then the same end ought not be disserved to make their parents criminal.

APPENDIX

STATUTORY RESPONSIBILITY OF PARENTS AND OTHERS FOR JUVENILE DELINQUENCY

STATE STATUTE	*ADULT RESPONSIBLE*	CHILD *Age*	CHILD *Prior Adjudication of Delinquency*	TREATMENT UPON CONVICTION *Imprisonment*	TREATMENT UPON CONVICTION *Fine*	TREATMENT UPON CONVICTION *Suspension, Probation, Bond*	*COURT HAVING JURISDICTION*
ALABAMA Code Ann. (1940) tit. 13, §§366, 370.	It shall be unlawful for a "parent, guardian, or other person" to aid, encourage or cause child to become or remain dependent, neglected or delinquent, or by words, threats or by neglect of any lawful duty to encourage any child . . . to conduct himself in way which would cause or . . . tend to cause delinquency or dependency or by neglect of any lawful duty to contribute to dependency, neglect or delinquency of child.	Under 16.	No. *Smithson v. State*, 34 Ala. App. 343, 39 So.2d 678 (1950).	12 months at hard labor	$100 maximum or both.	Yes. In discretion of court, bond and suspension of sentence or fine or both; maximum or 12 months probation on conditions which court deems proper.	Juvenile court (no jury trial).
ARIZONA Code Ann. (1939) §§43-1001 to 43-1005, 43-1008 to 43-1011.	Any person who shall cause, encourage or contribute to dependency or delinquency of a child, or for any cause be responsible therefor.	Under 18.	No.	One year.	$500 maximum or both.	Yes. $1,000 penal bond for suspension of sentence for two years maximum, conditioned on payment of $30 monthly maximum for care of child.	Superior court as in other criminal actions.
	§43-1009. Liberal construction in favor of state to protect child from neglect or omission of parental duty.			One year	$350 maximum or both.		*State v. Davis*, 58 Ariz. 444, 120 P.2d 808 (1942).
ARKANSAS Stat. Ann. (1947) tit. 4, § 45-239.	Any person who shall cause, encourage or contribute to dependency or delinquency of a child or for any cause be responsible therefor.	Under 21.	No. *Parsons v. State*, 212 Ark. 371, 205 S.W. 2d 860 (1947); *Chambers v. State*, 168 Ark. 248, 270 S.W. 528 (1925).	One year	$500 maximum or both.	Yes. Provision for suspension of sentence, stay or postponement of its execution or release of defendant from custody for welfare of child.	Criminal court.
CALIFORNIA Welfare and Institutions Code (Deering 1937) §702.	Any person who commits any act or omits performance of any duty which causes or tends to cause or encourage any person to come within court's jurisdiction or any person by threats or persuasion to induce such person to become or remain within jurisdiction of court.	Under 21.	No. *People v. Calkins*, 48 Cal. App. 2d 33, 119 P.2d 142 (1941).	Two years §19(a) Penal Code (1949) one year. *People v. Phair*, 137 Cal. App. 612, 615, 31 P.2d 421 (1934).	$1,000 or both.	Yes, if defendant pleads guilty, court may grant probation for five years on posting of bond. Sum left to court's discretion.	Juvenile court.

COLORADO Stat. Ann. (1935) c. 33, §§44-52; (Cum. Supp. 1951) c. 33, §67.	Any person who shall encourage cause or contribute to dependency, neglect or delinquency of a child, or do any acts which directly produce or contribute to conditions or who, having custody, control or supervision shall wilfully neglect to do that which will directly tend to prevent such state.	Under 18.	No.	One year	$1,000 or both.	Injunction for conduct complained of; probation for maximum of two years on a $2,000 bond.	Concurrent jurisdiction: juvenile and county courts.
CONNECTICUT Rev. Gen. Stat. (1949) § 8579.	Any parent, guardian or other person having custody who omits exercise of reasonable diligence in control of a child to prevent child from becoming a juvenile delinquent or in need of care of state or who permits child to associate with immoral persons or to beg or wander in streets or be an habitual truant, or enter gambling den . . . and any other person who knowingly is responsible for such conduct or conditions.	Under 16.	No.	Six months	$500 or both.	No.	Municipal court.
DELAWARE	No statute.						
DISTRICT OF COLUMBIA Code (1941) §§11-907, 11-919(2).	Any adult (§ 11-907(2)) or any person who by act or omission wilfully causes, encourages or contributes to any condition or by such act or omission tends to cause such condition.	Under 18.	No.	Twelve months	$200 or both.	Court has power to suspend sentence, place adult defendant on probation or impose any duty on adult for best interest of child.	Juvenile court (trial by jury).
FLORIDA Stat. (1951) §828.19.	Parent, guardian, or person having custody or any other person who shall by any act encourage, cause or contribute to the dependency or delinquency of such child.	Under 18.	Yes.	Three months maximum or both of above in court's discretion. §775.06	$100 maximum	Court may suspend sentence and impose conditions as to conduct of defendant. By bond (sum in Court's discretion).	Juvenile court.
GEORGIA Code Ann. (1937) §24-2437.	Parent, guardian or person having custody of delinquent or neglected child, or any other person who knowingly or wilfully has encouraged, aided, caused, abetted or connived at such state of delinquency or neglect or done any acts to directly promote conditions rendering child delinquent or neglected.	Under 16.	Yes.	Misdemeanor 20 days or both for contempt of court.	$200	Court may require bond with or without sureties; may place defendant on probation.	Juvenile court to have commitment jurisdiction only. Criminal court for trial by jury.
IDAHO Code Ann. (1947) §16-1710, 18-113.	Parent, guardian or person having custody or other person responsible for or by any act encouraging, causing or contributing to delinquency.	Under 18.	No. *State v. Drury*, 25 Idaho 787, 139 Pac. 1129 (1914).	Six months	$300 or both.	Court may suspend sentence if defendant complies with conditions imposed by court.	Probate court.

APPENDIX—Continued

STATUTORY RESPONSIBILITY OF PARENTS AND OTHERS FOR JUVENILE DELINQUENCY

STATE STATUTE	*ADULT RESPONSIBLE*	CHILD *Age*	CHILD *Prior Adjudication of Delinquency*	TREATMENT UPON CONVICTION *Imprisonment*	TREATMENT UPON CONVICTION *Fine*	TREATMENT UPON CONVICTION *Suspension, Probation, Bond*	*COURT HAVING JURISDICTION*
ILLINOIS Rev. Stat. (1951) c. 38, §§100–108, c. 23, §196(a)(b).	Any parent, legal guardian, or person having custody who shall knowingly and wilfully cause or encourage such person to become a dependant and neglected child or knowingly do acts which directly tend to render such child so dependant and neglected or knowingly fails to do what will directly tend to prevent such state of dependency and neglect. Also a third person contributing to delinquency.	Male under 17; Female under 18.	No. *People v. Brosnan*, 361 Ill. 545, 198 N.E. 708 (1935); *People v. Grul*, 388 Ill. 52 57 N.E. 2d 371 (1944).	One year in county jail, house of correction or workhouse—maximum or both.	$200 maximum	Court has power to release defendent on probation for one year upon defendant's entering into recognizance in such sum as court may direct.	Juvenile court.
INDIANA Ann. Stat. (1942) §§9–2804, 9–2805, 9–2809; (Cum. Supp. 1951) §10–812.	Unlawful for any person to cause or encourage boy or girl to commit any act which would cause them to become delinquent, or to send such boy or girl to house of prostitution, gambling house or by continued negligence or wilful act to encourage or cause delinquency. Parent, person having care, custody and control, or any person who encourages, counsels, or by reason of wilful neglect of any duty contributes to neglect or dependency.	Under 18.	No. *Montgomery v. State*, 115 Ind. App. 189, 57 N.E.2d 943 (1944).	Six months in county jail or workhouse —maximum or both.	$500 maximum	Court may suspend sentence and place defendant on probation for two years.	Criminal or juvenile court. (All rights as in criminal trial.)
IOWA Code (1950) §§233.1 to 233.4.	It shall be unlawful to (1) encourage to commit any act of delinquency (2) send child to house of prostitution or to place where intoxicating liquors are sold, to policy shop, pool room, or to induce such child to go there (3) knowingly encourage child to violate law or ordinance (4) knowingly permit child to be guilty of vicious or immoral conduct (5) knowingly contribute to dependency.	Under 18.	Child must be before the court. See 34 Iowa L.Rev. 636 (1949).	30 days in county jail—maximum or both.	$100 maximum	Court has power to suspend sentence for two years on good behavior.	Juvenile court.
KANSAS Gen. Stat. Ann. §§38-402, 38-416, 38-420, 38-429.	Parent, or other persons responsible, or other persons who shall by any act have caused, encouraged or contributed to such delinquency, dependency or neglect.	Under 16.	Yes; statutory language "In all cases where any child shall be a delinquent, dependent or neglected child, as defined by statute."	One year in county jail—maximum or both.	$1,000 maximum	Court has power to suspend sentence on posting bond of $2,000, conditioned on payment of $25 per month for support and care of child in institution; child may be left in offender's custody on bond, conditioned on certain conduct; court may suspend sentence and place adult offender on probation.	Juvenile court (trial by jury). *Ex parte Rockwood*, 146 Kan. 386, 69 P.2d 703 (1937).

KENTUCKY Rev. Stat. (1948) §§199.320, 199.990 (2)(a), 199.990 (2)(b).	(1) No person shall knowingly encourage, aid or cause or contribute to conditions (2) No person having custody shall fail to do any act which will tend to prevent child's becoming dependant, neglected or delinquent.	Male under 17; Female under 16.	No.	One year in county jail or workhouse—maximum or both.	$500 maximum	Court has power to suspend sentence on person's recognizance for one year with or without sureties.	County court (exclusive jurisdiction)
LOUISIANA Crim. Stat. Ann. (Dart 1943) art. 740-92.	Contributing to delinquency of a juvenile is the intentional enticing, aiding or permitting by anyone over 17 of any child under 17 to beg, associate with dispreutable persons, visit places where liquor is sold, visit gambling places, habitually trespass, use indecent language, perform immoral acts, absent himself from home without parental authority, violate state law or ordinance.	Under 17.	No. *State v. Scallon*, 201 La. 1026, 10 So. 2d 885 (1942); *State v. Lewis*, 183 La. 824, 165 So.1 (1935).	One year. or both.	$500 maximum	No.	Juvenile court.
MAINE Laws of Maine (1945) c. 286, § 238.	Parent, or other person having custody or control, who cruelly treats or wilfully fails to provide with suitable food, or allows child to visit house of prostitution, gambling house or bar.	Not specified.	Not clear.	Eleven months maximum for failure or neglect to support. Six months maximum for failure to perform any duty imposed by law.	$1,000 maximum $500	No.	County or municipal court.
MARYLAND Ann. Code Gen. Laws (Cum. Supp. 1947) art. 26, §§48B (c), 48C, 48E.	Parent, guardian or other adult who by any wilful act or omission contributing to, encouraging or tending to cause any condition bringing a child within the jurisdiction of the court.	Under 18.	No.	Two years maximum or both.	$500 maximum	Court may suspend sentence and place adult on probation. Court may impose duties on adult during period of probation.	Circuit court sitting as juvenile court—original exclusive jurisdiction unless adult elects trial by jury, then tried like criminal case.
MASSACHUSETTS Laws Ann. (1949) c. 119, §§52, 63.	Applicable section bears following heading: *Parent or Guardian Aiding in Delinquency of Child;* or any person found to have caused, induced, abetted, encouraged or contributed toward waywardness or delinquency of a child or to have meted in any way tending to cause or induce such waywardness.	Under 17.	No. (But child must be before the court.)	Six months maximum	$50 maximum	Probation subject to future conduct. Court may suspend sentence before trial and may allow defendant to enter into recognizance.	Concurrent jurisdiction of Boston Juvenile Appeal Court or district court.
MICHIGAN Comp. Laws (1948) §§ 750.145, 750.504, 721A.18(1), 712A.6.	Any person who by any act or by any word encouraged, contributes toward, causes or tends to cause any minor child to become neglected or delinquent so as to come or tend to come within jurisdiction of court.	Under 17.	No.	Punishable as misdemeanor 90 days in county ail—maximum or both.	$100 maximum	Parent, guardian or custodian or any other person may be ordered to refrain from continuing conduct which has tended to cause child to be within jurisdiction of court.	Juvenile division of probate court.

APPENDIX—Continued

STATUTORY RESPONSIBILITY OF PARENTS AND OTHERS FOR JUVENILE DELINQUENCY

STATE STATUTE	*ADULT RESPONSIBLE*	CHILD *Age*	CHILD *Prior Adjudication of Delinquency*	TREATMENT UPON CONVICTION *Imprisonment*	TREATMENT UPON CONVICTION *Fine*	TREATMENT UPON CONVICTION *Suspension, Probation, Bond*	*COURT HAVING JURISDICTION*
MINNESOTA Stat. (1949) §§ 260.27, 260.28, 610.19.	Parents, legal guardian or person having custody or any other person, who by any act, word or omission, encourages, causes, or contributes to—when such act, word or omission is not by other provisions of law declared to be a felony is guilty of a misdemeanor.	Under 18.	Yes.	Punishable as misdemeanor if such acts are not declared to be felony by other provisions of law. 3 months in county jail or maximum	$100 maximum	Court may suspend sentence and impose conditions of conduct to be complied with by defendant.	Juvenile court (in counties with population over 33,000). Fact that child has been adjudged more than once to be delinquent on account of conduct occurring in parent's custody shall be presumptive evidence that parent is responsible for last adjudicated delinquency.
MISSISSIPPI Code Ann. (Supp. 1950) §§ 7185-12, 7185-13.	Parent, guardian or person having custody or any person responsible, by any act of wilful commission or omission, or who aids child in escaping or who knowingly harbors such child.	Under 18.	No.	Six months maximum or both.	$500 maximum	Injunction and contempt of court (after child is found to be delinquent, if such person fails to omit doing such act, or to do act ordered by court).	Juvenile court (trial by jury for father, mother or guardian).
MISSOURI Rev. Stat. (1949) §§ 211.390(3), 211.400, 211.540.	Any person who thereafter knowingly contributes to delinquency or neglect of child who shall have come under care of court.	Under 17.	No. *State v. Johnson*, 145 S.W.2d 468 (Mo.App. 1940).	Contempt of court for interference with court order. Six months maximum or both.	$500 maximum	No.	Juvenile court.
MONTANA Rev. Codes Ann. (1947) §§ 10-617, 10-618.	Parents, legal guardian or other person who shall encourage, wilfully cause or contribute to, or through negligence in care custody, guidance, education, maintenance or direction of any child, or cause or permit child to violate any law of this state or knowingly associate with thieves, visit gambling places, use vile language, be guilty of immoral conduct, go to house of prostitution.	Under 18.	No.	Nine months in county jail maximum or both.	$10–$1,000	Court has discretion to suspend sentence and place defendant on probation. Up to $3,000 penal bond imposed by court to remove causes of delinquency.	Juvenile department of district court.
NEBRASKA Rev. Stat. (1943) §43-221.	Parent, parents, persons having custody or any other person who by any act encouraged, causes or contributes to delinquency.	Under 18.	Yes.	Six months in county jail—maximum or both.	$500	Court has power to suspend sentence for 2 years on imposition of conditions.	Juvenile court (jury trial).

NEVADA Comp. Laws (1929) §§ 1039–1046.	Any person who shall cause, encourage or contribute. Applies to parents (see § 1041(b)).	Under 18.	No.	Six months in county jail maximum or both.	$500 maximum	Suspension on conditions; two year bond not over $1,000 conditioned on payment of $20 monthly for care of child.	Juvenile court.
NEW HAMPSHIRE Rev. Laws (1942) c. 132, § 20.	Any parent, guardian or person having custody or control or anyone else who shall knowingly or wilfully encourage, aid, cause, abet or connive . . . or has knowingly done any act to produce, promote or contribute to delinquency of such child.	Under 18.	Yes.	One year maximum or both.	$500 maximum	Probation subject to orders; court may suspend sentence or before trial allow defendant to enter into recognizance in penal sum in discretion of court.	Municipal court.
NEW JERSEY Stat. Ann. (1939) §2:117-1.	Parent, or parents, legal guardian, or person having custody or any other person who shall be wilfully responsible for or who by any continued negligence or wilful act shall encourage, cause or contribute.	Under 18.	Yes.	§ 2:103-6. Three years with or without hard labor maximum or both.	$1,000 maximum	No.	Juvenile court and criminal court.
NEW MEXICO Stat. Ann. (1902) §§44-112, 44-207; (Cum. Supp. 1951) §44-116.	Any person who shall commit any act or omit performance of any duty which causes or tends to cause delinquency. To delinquency. To dependency and neglect.	Under 18. Under 16.	No. *State v. McKinley*, 53 N.M.106, 202 P.2d 964 (1949).	Contributing to delinquency: Five years maximum or both. Made felony in 1943; see *State v. McKinley*, 53 N.M. 106, 202 P.2d 964 (1949); Contributing to dependency or neglect: 90 days in county jail—maximum or both.	$1,000 maximum $10–$50	No.	District court and juvenile court.
NEW YORK Penal Law § 494.	Parent, guardian or other person having custody who omits to exercise reasonable diligence to prevent child from being adjudged delinquent or neglected as defined by statute.	Under 16.	No. *People v. Dritz*, 259 App.Div. 210, 18 N.Y.S.2d 455 (1940).	One year or both. *People v. Kelley*, 230 App.Div. 24, 243 N.Y. Supp. 613 (1930).	$500	No.	Children's court in upper N. Y. State counties Children's Court Division of the NYC Domestic Relations Court. Concurrent jurisdiction in county court, police courts and courts of special sessions and magistrates in Ontario and Chautauqua Counties.
NORTH CAROLINA Gen. Stat. Ann. (1952) §§110-21,110-39.	Parent, guardian or other person having custody who omits to exercise reasonable diligence in care, protection or control of such child, causing it to be adjudged delinquent, neglected or in need of care, or permits child to associate with improper persons.	Under 16. § 110-21.	Yes. *State v. Ferguson*, 191 N.C. 668, 132 S.E. 664 (1926).	Punishable as misdemeanor. See § 14-3.		No.	uvenile court.

APPENDIX—Continued

STATUTORY RESPONSIBILITY OF PARENTS AND OTHERS FOR JUVENILE DELINQUENCY

STATE STATUTE	*ADULT RESPONSIBLE*	*CHILD*		*TREATMENT UPON CONVICTION*			*COURT HAVING JURISDICTION*
		Age	*Prior Adjudication of Delinquency*	*Imprisonment*	*Fine*	*Suspension, Probation, Bond*	
NORTH DAKOTA Rev. Code (1943) §27-1627; (Supp. 1947) §14-0922.	Any parent, guardian or other custodian who wilfully neglects child, fails to exercise reasonable diligence in preventing child from being in disreputable place or from associating with vagrants or engaging in immoral occupation.	Under 18.	No.	Guilty of misdemeanor. Court may impose fine.		Probation, fine, suspension of sentence for 2 years.	Juvenile court.
OHIO Gen. Code Ann. (1951) §§1639-40, 1639-45, 1639-49, 1639-50.	Whoever abuses a child, or aids, abets, induces, causes, encourages or contributes toward dependency, neglect or delinquency, or acts in way tending to cause delinquency.	Under 18 (but for handicapped child under 21).	Yes. *State v. Friedman*, 350 Ohio 39, 74 N.E. 2d 285 (1947).	10 days to one year	$5 to $1000	Yes. Suspension conditions with bond.	Juvenile court (jury trial).
OKLAHOMA Stat 1951 §§ 856-858.2.	Every person (human beings without regard to relationship), parent, parents, or other persons causing or encouraging by any act or omission delinquency.	Under 18.	No. *Wallin v. State* 84 Okla. Cr. 194, 182 P2d 788 (1947).	Six months or both for first offense. Three years or both for second offense (felony). One year maximum or both, which applies to parents.	$500 $3,000 $500 maximum	No	Concurrent jurisdiction of juvenile courts and, if trial by jury, then held for common pleas or district court.
OREGON Comp. Laws Ann. (1940) §§ 23-1034, 23-1035.	Any person ("person shall include parents") responsible for, legal guardian, or any other person having care or custody by any act encouraging causing or contributing or which manifestly tends to cause.	Under 18.	No. *State v. Dunn* 53 Ore. 304, 99 Pac. 278, 100 Pac. 258 (1909).	One year maximum or both.	$1,000	No.	Juvenile court.
PENNSYLVANIA Stat. Ann. (1939) tit. 11, § 262, 263; (Cum. Supp. 1951) tit. 11, § 243.	Any person who contributes to delinquency of a child to whom jurisdiction of any juvenile court has attached.	Under 18.	No. *Commonwealth v. Jordon* 136 Pa Super. 242, 7 A. 2d. 523 (1939).	Three years maximum or both.	$500 maximum	Court may suspend sentence and place defendant on probation.	Juvenile court.

RHODE ISLAND Gen. Laws (1938) c. 425 §§ 6, 7; Pub. Laws (1943-44) c. 1441, § 28.	Every person or parent, parents, legal guardian or person having custody or control who cause, procure, encourage. See description under Treatment upon Conviction Section.	Under 18.	Not clear.	Penalty for delinquency One year maximum. Parent, legal guardian or person having custody who permits child to habitually associate with criminals, grow up in ignorance, idleness and crime or has an unfit home. Penalty for neglect. One year maximum.	or $500 $250	Court may suspend sentence and place defendant on probation.	Juvenile court (trial by jury).
SOUTH CAROLINA Code Ann. (1942) § 255 (19). Greenville County: §256; (Supp. 1948) §256-126.	Parent, guardian or other person having custody who omits to do . . . and any other person who is responsible for acts which caused such child to be adjudged delinquent.	Under 16.	Yes.	One year or both. 30 days or both.	$500 $100	Adults may be subject to injunction, restraining order, or held in contempt in Greenville County proceeding, if child is before court and adult is brought in.	Children's court separate part of probate court of counties having population between 85,000 and 100,000; also Children's Court Greenville County concurrent with circuit court. In Greenville County, children's court may refer cases to magistrate or general sessions.
SOUTH DAKOTA Code (1939) §§43.0401 to 43.0409, 43.9901.	Any person who by any act, causes, encourages, contributes to dependency or delinquency.	Under 21.	Not clear.	One year or both.	$500 maximum	§43.0402. Court may suspend sentence for two years. Court may require bond of maximum of $1,000, conditioned on payment of $20 a month; and further conditioned on removing cause of dependency or neglect.	County court.
TENNESSEE Code Ann. (Williams 1934) § 10307.	In all cases where child shall be declared delinquent, parent, guardian or other person responsible in law for its care and custody who by any wilful act or by reason of failing, refusing or neglecting to do its legal duties, causes, contributes to or encourages.	Under 17.	Yes.	10 days to 3 months or both.	$5 to $50	Court may suspend sentence on condition that defendant pay maximum of $25 per month, towards maintenance and care of child.	Criminal court or circuit court. § 10303. Statute is to be construed liberally.
TEXAS Penal Code Ann. (Vernon, 1936) art. 534.	Parent, guardian, person having custody or person responsible, who by any act encourages any act which tends to debase and injure the morals.	Under 17.	Yes.	1 year maximum or both.	$500 maximum	No.	Criminal court.
UTAH Code Ann. (1943) § 14-7-50	Any person over 18, who by any act, words or conduct, or by omission to do something required by law to be done, induces any juvenile to deport himself in manner which tends to cause such juvenile to become delinquent, or aids, abets, encourages dependency, neglect or delinquency of any juvenile.	Under 18.	No.	Punishable as misdemeanor § 103-1-16 6 months in county jail maximum or both.	 $300 maximum	§ 14-7-56. Court has discretion to suspend sentence without bond on certain conditions. § 14-7-57. Court has discretion to conditionally suspend sentence on $1,000 bond to pay for care of child.	Juvenile court. Prosecution to conform to criminal court practice. § 14-7-53. Appeals to be taken to district court. § 14-7-6.

APPENDIX—Continued

STATUTORY RESPONSIBILITY OF PARENTS AND OTHERS FOR JUVENILE DELINQUENCY

STATE STATUTE	*ADULT RESPONSIBLE*	CHILD: *Age*	CHILD: *Prior Adjudication of Delinquency*	TREATMENT UPON CONVICTION: *Imprisonment*	TREATMENT UPON CONVICTION: *Fine*	TREATMENT UPON CONVICTION: *Suspension, Probation, Bond*	*COURT HAVING JURISDICTION*
VERMONT	No statute.						
VIRGINIA Code Ann. (1950) § 18-6.	Any person over 18 who shall cause or encourage any child to commit misdemeanor or send child to place for unlawful purpose, or induce, cause, encourage, contribute toward dependency, neglect or delinquency of any such child.	Under 18.	No. See *Bibbs v. Commonwealth*, 129 Va. 768, 106 S.E. 363 (1921)	1 year maximum or both.	$500 maximum	No.	Juvenile court.
WASHINGTON Rev. Code § 13.04.-170.	Parent, guardian, person having custody or other who by any act or omission encourages, causes or contributes to dependency or delinquency.	Under 18.	Yes. Delinquency may be established at time of trial of adult. *State v. Williams*, 73 Wash. 678, 132 Pac. 415 (1913).	1 year or both.	$1000 maximum	Yes. Suspension of sentence left to court's discretion. Court may impose conditions. Amount of bond in discretion of court.	Juvenile court.
WEST VIRGINIA Code Ann. (1949) §§ 4904 (87) to 4904 (98).	A person who by any act or omission contributes to, encourages or tends to cause the delinquency or neglect of child.	Under 18.	No. *State v. Harris*, 105 W. Va. 165, 141 S.E. 637 (1928).	1 year in county jail or both.	$500	§(89). Court may (1) suspend sentence for 2 years, (2) stay or postpone execution of sentence, (3) release person. § (90). Maintenance of child by convicted person receiving suspended sentence. Bond up to $1000 may be required. § (92). Court may require (1) furnishing treatment and care for welfare of child, (2) doing what may be calculated to remove cause of delinquency or neglect, (3) payment of $20 per month for care of child.	Juvenile court.
WISCONSIN Stat. (1949) §§ 48.01(5)(c), 48.08(2), 351.20.	Parent, legal guardian or person having custody or any adult.	Under 18.	No.	1 year or both. May be held in contempt of court. Parent or legal guardian may receive 10 days to 1 year.	$500 $25 to $500	Court has power to make orders with respect to adult's conduct. Court may suspend sentence for 2-year period.	Juvenile court.
WYOMING Comp. Stat. Ann. (1945) §§ 58-101, 58-104.	Unlawful for any person charged by law with the care or custody or control of any child knowingly to cause or permit his life, health, morals, or welfare to be endangered.	Under 19.	No.	12 months or both.	$50 to $1000	No.	Justice of peace.